

DEPARTMENT OF HUMAN SERVICES

DIVISION OF DISABILITY SERVICES

Personal Assistance Services Program

Consumer Fees; Training Stipend

Proposed New Rules: N.J.A.C. 10:140

Authorized By: Gwendolyn L. Harris, Commissioner

Department of Human Services

Authority: N.J.S.A. 30:4G-21

Calendar Reference: See summary below for explanation of exception to
calendar requirements

Proposal Number: PRN 2003-87

Submit comments in writing by May 2, 2003 to:

Michael Nuskey, Program Administrator

Personal Assistance Services Program

Division of Disability Services

P.O. Box 700

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The agency proposal follows:

Summary

The provisions in N.J.S.A. 30:4G-15 establish the administration of Personal Assistance Services Program under the Department of Human Services. Within the Department the program was previously administered by the Division of Youth and Family Services under N.J.A.C. 10:123A, and then was transferred to the newly created state Office on Disability Services in October 1997. With the transfer N.J.A.C. 10:123A was recodified as N.J.A.C. 10:140, effective March 1, 1999. In accordance with the terms of Executive Reorganization Plan 001-2001, N.J.S.A. 30:6E-1 et seq, the State Office on Disability Services was reestablished as the Division of Disability Services in July 2001, and currently maintains the state administration of the Personal Assistance Services Program as a function of the agency.

The Personal Assistance Services Program provides up to 40 hours per week of personal assistance services to persons with chronic physical disabilities from the age of 18 through the age of 65 and is administered by county designated agencies approved by the Commissioner of the Department of Human Services. Personal assistance services include routine non-medical tasks that are performed by a personal assistant to enable individuals to be employed, to receive training or education related to employment, or to support community-based independent living.

In view of the fact that N.J.A.C. 10:140 expired on August 11, 2002, the rules pertaining to the administration of the program are being proposed as new pursuant to N.J.A.C. 1:30-6.4(h).

The specific purpose of the readoption with amendments is to provide public notice of proposed changes the Department of Human Services has determined as necessary and appropriate to improve and enhance the statewide administration of the program under the Personal Assistance Services Act.

A brief description of each section is provided as follows:

Proposed N.J.A.C. 10:140-1.1 cites the legal authority of the Department of Human Services to provide assistance to individuals with chronic physical disabilities through the administration of the Personal Assistance Services Program.

Proposed N.J.A.C. 10:140-1.2 sets forth the scope of the rules.

Proposed N.J.A.C. 10:140-1.3 delineates the Personal Assistance Consumer Bill of Rights.

Proposed N.J.A.C. 10:140-1.4 defines the terms and words used in this chapter.

Proposed N.J.A.C. 10:140-1.5 sets forth the target population and priority for services.

Proposed N.J.A.C. 10:140-2.1 sets forth the eligibility standards for receipt of services.

Proposed N.J.A.C. 10:140-2.2 sets the standards for granting exceptions to the eligibility standards.

Proposed N.J.A.C. 10:140-2.3 establishes the procedures for requesting and granting exceptions to the eligibility standards.

Proposed N.J.A.C. 10:140-3.1 sets forth the screening procedure.

Proposed N.J.A.C. 10:140-3.2 sets forth the assessment process and time frames.

Proposed N.J.A.C. 10:140-3.3 establishes the requirements of the individual personal assistance services plan.

Proposed N.J.A.C. 10:140-3.4 sets forth the procedure for providing written notification to an applicant upon acceptance or denial of the application, and also gives the procedure for placement on a waiting list.

Proposed N.J.A.C. 10:140-3.5 establishes non-duplication of services and sets standards for service provision.

Proposed N.J.A.C. 10:140-3.6 establishes criteria for granting exceptions to service standards.

Proposed N.J.A.C. 10:140-3.7 establishes the procedures for requesting and granting exceptions to service standards.

Proposed N.J.A.C. 10:140-3.8 establishes procedures for the transfer of services from one county into another county.

Proposed N.J.A.C. 10:140-3.9 establishes procedures under which services may or shall be suspended as well as terminated, and the procedures to be followed in suspending or terminating services.

Proposed N.J.A.C. 10:140-3.10 establishes procedures for requesting an administrative review based on a denial, reduction, suspension or termination of

services or failure to act upon a request for services within prescribed time frames.

Proposed N.J.A.C. 10:140-3.11 sets forth the procedure and time frame for requesting an administrative hearing and states that requests for administrative hearing will be made to the State Program Administrator. N.J.A.C. 10:140-3.11 also establishes the procedure and time frame for filing of a notice of appeal in the event of a disagreement with final outcome of administrative hearing.

Proposed N.J.A.C. 10:140-3.12 provides guarantees of confidentiality and restricts disclosure of information, except under certain circumstances.

Proposed N.J.A.C. 10:140-4.1 sets forth standards for county designated agencies in contracting for services with other service providers.

Proposed N.J.A.C. 10:140-4.2 provides the fees to be paid to contracting service providers or contracting individual personal assistants, and for the performance of assessments, reassessments and follow-up assessments. The proposed amendment in N.J.A.C. 10:140-4.3(b) states the fee for reimbursement shall be \$13.26 per hour on weekdays and \$15.30 on weekends and holidays.

Proposed N.J.A.C. 10:140-4.3 establishes the procedures and the consumer sliding fee to be used in determining consumer cost share fees.

Proposed N.J.A.C. 10:140-4.4 sets forth the standards to adjustments in consumer cost share fees.

Proposed N.J.A.C. 10:140-4.5 sets forth the procedures for requesting adjustments in consumer cost share fees.

Proposed N.J.A.C. 10:140-5.1 contains the requirements for personal assistants.

Proposed N.J.A.C. 10:140-6.1 sets forth the training requirements for completion of training courses for personal assistants and consumers, and specifies requirements for the county designated agency to share information with the designated training agency.

Proposed N.J.A.C. 10:140-6.2 sets forth the standards and procedures for requesting waivers to training requirements for personal assistants.

Proposed N.J.A.C. 10:140-6.3 sets forth penalties for non-compliance with training requirements for consumers and personal assistants.

Proposed N.J.A.C. 10:140-6.4 establishes standards for compensation for attendance at training courses for personal assistants. The proposed amendment at N.J.A.C. 10:140-6.4(b) includes a revision to the stipend paid to personal assistants upon completion of training, which shall be established at \$9.00 per hour.

Proposed N.J.A.C. 10:140-7.1 sets forth the requirements for the county designated agencies.

Proposed N.J.A.C. 10:140-7.2 sets forth the duties of the county designated agencies.

Proposed N.J.A.C. 10:140-7.3 establishes the duties and membership requirements of the State Consumer Advisory Council on Personal Assistance Services.

Proposed N.J.A.C. 10:140-7.4 sets forth the process to be followed for disqualification of an agency.

Proposed N.J.A.C. 10:140-7.5 sets forth the process to be used should an agency request an appeal of a disqualification from participation in the administration of the Personal Assistance Services Program.

N.J.S.A. 30:4G-21 requires the Commissioner of the Department of Human Services to promulgate rules to effectuate the purposes of the Personal Assistance Services Act. The Department of Human Services, Division of Disability Services, proposes to amend the provisions of N.J.A.C. 10:140-4.2 to provide for an increase in the reimbursement rate ceiling and to increase the rate of compensation for personal assistants upon the completion of training workshops under N.J.A.C. 10:140-6.4.

The proposed amendments reflect an increase to the maximum allowable fee for contracting with provider agencies for personal assistance services. Under the proposed amendments, the weekday rates will be increased from \$13.00 to \$13.26 per hour on weekdays, and from \$15.00 to \$15.30 per hour on weekends and holidays. The Department believes that the increase will give county agencies an improved ability to contract with providers in a competitive market and afford an opportunity for providers to offer an increase in wages for personal assistants that are employed under the program.

The proposed amendments contain a revision in the rate of compensation paid to personal assistants upon completion of program training courses. Under the proposed amendments the stipend issued to personal assistants for attendance at training courses will be increased from \$8.00 to \$9.00 per hour for each hour of training completed. All personal assistants that are employed under the Personal Assistance Services Program are mandated in accordance with

N.J.A.C. 10:140-6.1(b) to complete two training courses, Orientation and Philosophy of the Personal Assistance Services Program and Basic Techniques of Personal Assistance Services, and as such, may need to take time off from regular work assignments to participate in training and fulfill necessary requirements. The Consumer Advisory Council on Personal Assistance Services requested that the Department of Human Services to revise the current stipend issued to personal assistants for attendance at courses. The Advisory Council recommended an increase in the stipend paid to ensure appropriate compensation in situations in which a personal assistant is required to take time off from performing normal job assignments to attend training courses. The Consumer Advisory Council on Personal Assistance Services believes, and the Department agrees, that the adjustments made to the rate of compensation will encourage personal assistants employed under the program to complete required training, and enhance and improve their skills and abilities in the provision of personal assistance services to eligible consumers.

The Division has provided a 60-day comment period on this notice of proposal. Therefore, this notice is exempted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division of Disability Services anticipates that the proposed new rules with amendments will provide a positive social impact on the lives of individuals in New Jersey with chronic physical disabilities. As of January 1, 2003, 470

individuals were being served statewide under the Personal Assistance Services Program.

The Personal Assistance Services Program provides a means by which individuals with physical disabilities can enhance their independence and self-sufficiency through their direction of personal assistance services. Such services enable individuals with disabilities to become employed, prepare for employment, remain employed, pursue an education, or remain independent and allow participation in their community.

The services provided under the Personal Assistance Services Program enable consumers to be employed or prepare for employment in order to become self-sufficient, and thus result in a significant social benefit for people with disabilities. For the general public, the benefit of fuller integration of people with disabilities provides for a more representative society. The full participation, integration and productivity of those served by this program in all aspects of community life, advances civil liberties to the benefit of society as a whole.

To the extent that the increase in reimbursement rates will provide for greater access to personal assistance services, and the increase in the training stipend will ensure that personal assistants participate in training to enhance and improve on skills and abilities in providing services to consumers and receive appropriate compensation for time taken to fulfill training obligations, the amendments are expected to have a positive social impact.

Economic Impact

No adverse economic impact is anticipated from these proposed new rules. The full cost of the Personal Assistance Services Program, as established through the enabling legislation, has been wholly State supported through a line item in the state budget every year. For state Fiscal Year 2003, \$6.9 million from general and casino revenues has been appropriated to administer this program. A maximum of 15 percent of this amount is designated for administrative expenses, per the enabling statute.

The economic impact on the target population of physically disabled individuals is expected to be very positive. These individuals will be able to remain employed or will be able to prepare for employment, thus gaining the skills necessary for future economic self-sufficiency.

Individuals who apply for services under the Personal Assistance Services Program and who qualify under the current Social Services Block Grant guidelines receive services at no cost. Individuals with incomes in excess of those guidelines are required to contribute towards the cost of their services pursuant to a sliding fee scale. The cost share fee contributions that are received from eligible individuals will have a positive impact on the program in that the funds collected will go towards the expansion of services to individuals who otherwise would remain on a waiting list.

The proposed rate increase will also impact on the cost share provision. Some consumers may experience an increased financial burden with the implementation of the rate increase at the county level. Prior revisions to the consumer sliding fee scale have been implemented to offset financial burdens that result from the rate increase. Individuals may also request a reduction in

their cost share liability based on the submission of verifiable expenses, in situations where adjustments to the scale were not sufficient to reduce financial burden for consumers under N.J.A.C. 10:140-4.4. This provision gives individuals the ability to remain in the program and continue to receive services while still contributing towards the cost of services, at a rate that would minimize financial hardship to them. The Department of Human Services will accommodate the rate increase with additional funds that were provided for a direct care salary provision in the state budget under the fiscal year 2003 Appropriations Act.

The proposed increase to the training stipend issued to personal assistants for completion of training is fully supported through a provision in the state budget for Personal Assistance Services Program which enables the delivery of training services for personal assistants that are employed under the program. The training stipend provision will ensure that personal assistants will not be burdened financially by having to take time off from employment in order to fulfill mandatory program training requirements.

Federal Standards Statement

A federal standards analysis is not required because the proposed new rules are not subject to any federal requirements or standards.

Jobs Impact

The proposed new rules will not result in jobs being generated or lost.

Agricultural Impact Statement

The Division of Disability Services anticipates no impact on the agriculture industry in New Jersey as a result of the proposed new rules.

Regulatory Flexibility Analysis

The providers under this program historically have been entities of county government, such as County Offices for the Disabled, Boards of Social Services, or components of the county departments of human services. The enabling legislation for the Personal Assistance Services Program allows private not for profit organizations which have experience in providing information and services for disabled adults to be providers under the program as well. These organizations are small businesses, as that term is defined in N.J.S.A. 52:14B-1 et seq., and for the purposes of the proposed new rules are subject to the same reporting, recordkeeping, and other compliance requirements as the government entities.

Pursuant to N.J.A.C. 10:140-7.2 all county designated agencies are required to perform the following duties under the program: complete necessary forms to determine eligibility of applicants; determine cost share amount and provide billing information to consumers; maintain and update individual consumer files; maintain fiscal and program records for the program; prepare monthly reports for timely submission to the designated State agency; provide

verification of time sheets signed by eligible consumers and personal assistants attesting to hours of services rendered.

No capital costs are anticipated from these proposed amendments. The full cost of the Personal Assistance Services Program, as established through enabling legislation, has been fully supported through a line item in the state budget annually.

In order to ensure compliance with requirements established under N.J.A.C. 10:140 county designated agencies will be required to utilize professional services, for the completion of eligibility assessments, payroll and accounting, and maintenance of fiscal and program reporting. While the majority of county providers have professional staff on hand as part of the agency organization to manage these requirements some providers may elect to contract with other agencies or individuals for particular services.

No differentiation based on business size is being provided in the rules because the requirements are neither difficult nor excessive. The standards are being kept consistent in order to ensure equity of service delivery and protection for the consumers, who are expected to benefit from increased accessibility to personal assistant services.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows: